

Hamilton County Board of Zoning Appeals - South District

June 15, 2004

Mrs. Burrow called the official meeting of the Hamilton County Board of Zoning Appeals - South District to order at 8:05 p.m.

Members Present: Lee Anne Burrow, Bill Cooper, Jim Galloway, and David Musselman. Absent: Chuck Crow. Also present: Charles Kiphart, Director; Randy Leerkamp, Legal Counsel; and Linda Burdett, Secretary.

Declaration of Quorum: Mrs. Burrow declared a quorum with four out of five members present.

Guests: See guest sheet.

Communications/Reports: Mrs. Burdett stated that everything had been passed out.

Approval of Minutes: Mrs. Burrow asked for approval of the minutes.

Mr. Galloway **moved to approve** the minutes.

Mr. Musselman seconded.

With no comments or corrections on the minutes of March 16, 2004...Mrs. Burrow called for the vote.
4 yes votes...0 no votes.

Old Business: None to present.

New Business: Mrs. Burrow continued the meeting with **SBZA-RV-0003-06-2004** a requirement variance reducing the front yard set-back from the required 60 ft. to 53 ft. for a room addition. Would the petitioner or whoever is representing them please step forward and state your name and address.

Mr. Galloway advised the Board that he was one of the notified property owners on this petition.

And with that being said... Mr. Galloway removed himself from the Board.

On advise of Mr. Leerkamp, Mrs. Burrow advised the petitioner that with only three of the board members present you will need all three yes votes. If you would like to postpone your portion of the meeting tonight until next month you may do so without any other costs.

Robert Audler, of 13480 East 179th Street, stated his name and address for the record. Thank you. I would like to continue. I am asking the board for a front yard set-back of seven (7) feet. We would like to do a remodel of the current master bedroom and bathroom. Current bedroom and bathroom are

outdated, not very large, and lack closet space. If we expand out the back of the house... we would combine the two guest bedrooms which would leave us two bedrooms total for the house. It would also require the removal of three mature trees. We cannot expand out the side of the house towards the south because we run into set-back issues because we're too close to the side property line. It would also give the house an unbalanced look. If we build up adding a second story it would cause me a hardship as I am 30 % disabled. This renovation will increase the value of our home, bring it up-to-date with other new or remodeled houses in the area. It will not limit anyone access, will not hinder anyone's view, will not be injurious to the public, or infringe on anyone else's rights. Thank you.

Mr. Musselman asked about the size of the property.

Mr. Audler answered... 1.1 acres sir.

With nothing further from the Board... Mrs. Burrow opened the hearing to the public at 8:12 p.m. And with no one stepping forward to address the Board... Mrs. Burrow closed the public portion of the hearing at 8:12 p.m.

Mr. Musselman **made a motion** to approve SBZA-RV-0003-06-2004.

Mr. Cooper seconded.

After minimal comments... Mrs. Burrow called for the vote. **3 yes votes... 0 no votes.**

With the vote being complete... Mr. Galloway return to his position on the Board.

Mrs. Burrow continued with **SBZA-L.U.V.-0004-06-2004** a Land Use Variance to use the property for timber, saw mill, or processing business for wholesale and retail wood sales. Would Mark or Sherri Hanna or their representative please step up to the podium and state your name and address.

Mark Hanna, of 12952 East 196th Street, Noblesville, Indiana, stated his name and address for the record. What I want to do is cut firewood. I don't want to run a saw mill. I bought the property in 1996. I ran a business there every since my home was there in 1997. I didn't know I was doing anything wrong. The wood business has become a third of my yearly income. I work a seasonal job which lays me off right before Christmas and I don't go back until February. I do not go on unemployment; I do not go on food stamps. I live off the firewood while I'm laid off. My firewood piles are 1,100 feet off the road. It's not trash or junk wood coming in there. It's solid logs. I cut it up with a chain saw. Then I just run log splitters. I invited IDEM out to look at the property. I want everybody to be assured that this is not a dump site. All it is is a storage lot for wood. There is a second copy of a legal notice that has been floating around. I don't know who sent it out. I would like to address some of the issues that they put on the bottom of it. [Number 1... if the property is re-zoned by a variance for a wholesale/retail business... it can't go back to a residential/agriculture.] I don't want a re-zone. I just want a variance. You can put a time limit on it if you want at the end when I sell the property. That's fine by me. [Number 3... the property is getting trash

from the tree service.] I'm just getting logs from the tree service. The heaviest truck I get weights 58,000 pounds. A semi-load with grain weights 85,000 pounds; the trash truck that picks up my trash every week weights 66,000 pounds. So I don't think the trucks are honestly going to hurt the roads. Do you have any questions?

Mr. Galloway asked how many trucks he got in a week.

Mr. Hanna answered... 2 to 3 on average. There may be weeks where I would get one load a day and then there are weeks where I may go without getting any loads at all.

Mrs. Burrow asked for clarification on the pictures that his property was long and narrow.

Mr. Hanna stated that his property was 150 ft. wide.

Mr. Musselman asked Mr. Hanna if he cuts every week.

Mr. Hanna stated that he periodically cut loads. Normally I shut down in March or April. I bail hay in the summer.

Mr. Cooper read a portion of a letter sent to the Board regarding the property. The Hanna property at this time looks like a disaster with trash, logs, and old vehicles. A saw mill would just add to the mess. Mr. Hanna how would you answer that comment made in one of these letters?

Mr. Hanna stated his property was 150 ft. wide. I moved the farm equipment behind the barn, I've got a fence up, and I try to keep everything behind the fence. I just don't have a lot of room. One of the vehicles is my son's. He'll get his drivers license soon. The other vehicle is a one ton dump truck that I want to get running to haul the firewood with.

With nothing further from the Board... Mrs. Burrow opened the hearing to the public at 8:26 p.m. and asked anyone wishing to address the Board either for or against this petition to step up to the podium and state their name and address for the record.

Armind Hanni, of 12933 East 196th Street, Noblesville, stated her name, introduced her husband, Michael, and identified their address for the record. We received two legal notices about this property. I have a petition with 48 signatures from people in the immediate neighborhood against this special use permit. The immediate neighborhood does not want commercial activity occurring. We would like to stay small, agricultural, and residential. We also want the Board to be aware that this use is not consistent with the neighborhood. We are a hard working neighborhood. Everyone in that neighborhood has done everything they can to get their property in as good of shape as possible. This property does not meet muster. There is no other commercial in this neighborhood occurring. And this use would adversely affect our properties, their values, and the perceptions of other people coming through our neighborhood.

Michael stated that the petition was signed by people within a one mile radius around our adjacent properties. The general consensus is we don't want this at all.

Mrs. Hanni stated that they understood somebody trying to make a living and trying to make a little extra money on the side but this has gotten too big and too out of control and it's no longer just money on the side. This is an actual business. When we were researching what was going on... wood processing is a special use allowed only in an A-4 and M-4. Are they going for a re-zone in order to be a Special Use Variance?

Mrs. Burrow responded. No ma'am. A variance.. you can put time tables on it, it can be eliminated once people moved, we can put any kinds of conditions on it. A variance does not re-zone the property. The variance is just a variance to the zoning.

Mr. Galloway stated that a variance will allow them to do what might be acceptable in an A-4 in an A-2 District. It's for a use that is not acceptable in that district.

Mrs. Hanni asked about submission of the required pre-submission items indicating the days, use, and hours of operation, environmental and archeology assessment, statement of impact on existing surroundings, traffic studies, drainage plan, facility maintenance plan, noise impact assessment and buffering plans, noxious fumes assessment, site security plan, site safety plan, and the site development plan.

Mr. Hanni asked if with a variance those items were not necessary.

Mr. Kiphart stated that the list they read was for a Special Use. We have re-zones of property, we have Special Uses of property which are specifically listed in the ordinance for specific zones but when none of those are appropriate then an individual can ask for a Land Use Variance. We ask that they submit as much information as they can. The Board can, under a variance, ask the petitioner any kinds of questions and they can request any type of additional information that will help them make a decision. And they can ask the public for the same thing.

Mrs. Hanni stated there were also some irregularities in the site plan. It appears that they are supposed to have 4.56 acres but by the dimensions shown on the site plan it is significantly more. It don't know if they have impinged on an adjoining property but it looks like they have by over 200 ft. to the north.

Mr. Kiphart stated that the acreage is 4.56. It was taken off the county's records and I believe that is what is shown on the aerial photo.

Dave Barker, of 12974 East 196th Street, stated his name and address for the record. I live just east of Mr. Hanna. I have no problems with Mr. Hanna cutting firewood on his property to supplement his income. I wouldn't want to see it zoned for a sawmill so when Mr. Hanna moves out...

Steve Fleenor, of 19590 Victory Chapel Road, stated his name and address for the record. My house is the closest to their property. My house is 175 ft. from 196th Street. I can attest that every since this place

started I have had to deal with big trucks coming in and out in the morning. They usually start about 6:30 - 7:00 a.m. and they go until mid-morning seven days a week. It's annoying. The trucks have loud mufflers. It breaks the peace of the whole area. That's my biggest complaint. I really can't hear his cutting from where I am but the trucks are right there in front of my property.

Carlton Mills, of 12377 East 196th Street, stated his name and address for the record. I thought a retail business consisted of a sign and people coming in and out of your property to purchase things. I have known Mr. Hanna for quite some time and most of their firewood is cut up and delivered. I understand he is retailing the firewood out but it's not like he's bringing in any customers. I'm self-employed so I'm in and out a lot. As far as the numbers of trucks... I don't see seven days a week worth of trucks and I'm home a lot. I could take you to ten farms in the area out there that's got weeds 6 to 8 ft. tall and old equipment sitting around... if we're going to start complaining about that. I think there is a point where we draw the line. I don't want to see a point where a person can't do anything off of their property to make a little extra money. If it's not adversely affecting the highways and most people sleep at night... he's not cutting firewood in the dark. In the winter time we're not outside anyway. I have a problem with not being able to have things on your property that you pay good tax dollars for to a point where it starts infringing. I appreciate your time.

Mike Hoy, of 12529 East 196th Street, stated his name and address for the record. I live to the west of Mr. Hanna about 1/4 mile. What am I fearful of is any form of re-zoning. I bought the house about ten years ago and I knew what I was getting into. I want it to stay real agricultural and residential. We haven't said anything about noise, time of day, type of equipment, and the variation is way too wide open and unlimited.

Nancy Riser, of 19474 Victory Chapel Road, Noblesville, Indiana, stated her name and address for the record. We live just to the south of them. I watch the trucks go up and down the street. To my knowledge he has been doing this for a while and it hasn't upset myself or my property. I did sign the petition to put a sawmill in there. That scared me to death but as far as I can understand... if he is going to be doing the same thing that he's been doing this whole time... I don't have a problem with it. As long as it's not a great big huge thing that I hear 24 hours a day... I think it's great. Thank you.

Mrs. Burrow asked for clarification on the reason this was addressed as a sawmill. (2) So it is just the closest definition to cutting firewood?

Mr. Kiphart stated that it was the closest land use definition that he could find for what was being proposed. (2) I think sawmill has a very wide definition from a small building with some kind of saw in it and their milling wood to a huge warehousing plant that may cover two or three acres and process thousands of logs a day and hire 50 or 60 people. It's not that. This is at the lowest end of what a sawmill may be classified as.

With no one else from the public stepping forward... Mrs. Burrow closed the public portion of the hearing at 8:43 p.m.

Mr. Kiphart advised the board that the Plan Commission did make a positive recommendation to the BZA 7 yes... 0 no votes based on what Mr. Hanna presented as to what his business was and not on the term of sawmill.

Mr. Galloway added that that ruling was that this was compatible with the Comprehensive Plan.

Mr. Leerkamp addressed the Board and the audience... with regard to the second Legal Notice that was sent out... items number 1 and 2 typed in at the bottom of the Legal Notice are total and complete mis-statements of the law. Secondly, this may constitute a criminal act which may explain why whoever sent this out did not identify themselves tonight. What they have done is taken a legal notice that is required by both state statute and the Hamilton County Ordinance and made it appear to be something other than what the legal notice was and distribute it to the public in general for the stated purpose found in item 4 which was to generate attendance here tonight. That should not influence the decision of the Board but I want to make sure that everybody knows that items number 1 and number 2 do not state the law as it applies in this case.

Mr. Cooper asked for clarification on what had precipitated this whole thing.

Mr. Kiphart stated that this was based on some complaints from the neighbors. They were just kind of tired of it and wondered if there was anything that could be done under the zoning ordinance.

Mr. Galloway **moved to approve** the variance request.

Mr. Musselman seconded.

Mr. Galloway stated that if we do approve this we do need some conditions on it. I agree the "sawmill" is too broad of a use. It would need to be limited to what he has been doing only. I don't know whether there is some way we can limit the growth so it doesn't get any bigger than what it is now.

Mrs. Burrow suggested limiting the number of trucks that come in and the time frame. I think there definitely needs to be a time.

Mr. Galloway stated they could limit this to daytime hours.

Mr. Musselman stated it was nice seeing the logs stacked up. I really don't have a problem with him cutting firewood as long as it doesn't get any bigger.

Mr. Cooper stated that if they do approve it we do need, as Mr. Hanna offered, to have some sort of condition where the variance goes away if he sells the property.

Mr. Galloway suggested the condition for no retail sales on site so that wouldn't generate people coming

to him to buy the firewood.

Mrs. Burrow made a motion that we amend the first motion (1) to keep the business on the north end of the property - which would be behind all the buildings; (2) no on-site sales; (3) limited to firewood processing only; and (4) this stays with the current owner.

Mr. Musselman seconded.

With nothing further from the Board... Mrs. Burrow called for the vote on the amendment. 4 yes votes... 0 no votes.

With nothing further from the Board... Mrs. Burrow called for the vote on the motion as amended. 4 yes votes... 0 no votes.

The meeting continued with **SBZA-RV-0005-06-2004** concerning a requirement variance for the reduction of road frontage.

Lee Miller, of 948 Conner Street, Noblesville, stated his name and business address for the record. I am representing the Boden family. The real estate is located on the south side of 166th Street mid-way between Summer Road and Boden Road. It is a 9.67 acre tract that has 182.17 ft. of road frontage on 166th Street. Currently in the southeast corner of the tract but not included as a part of the tract is a home that the daughter, Claudia, lives in. The son, Chuck, has multiple sclerosis and is legally blind. The family wishes to build a home for him to the north of Claudia's home and the parents would like to build a home to the north of Chuck's home for themselves so they could better care for each other and take care of the family. The variances we are requesting is from the size from 3 acres to 1 acre. There is a sanitary sewer constructed within their property so I think this is a reasonable request. The frontage that exists on this property is only 182 ft. Currently the tract that Claudia lives on has a 20 ft. ingress/egress easement back from 166th Street so there is an existing drive. The plan is not to put any other drives in. The other tracts would access that drive through cross-easements. The other thing is a waiver for the requirement for a plat.

Claudia Beeler, of 12203 East 166th Street, stated her name and address for the record. My father is getting older. My brother is legally blind. He walks with a cane. He has M.S. He can no longer drive. By them taking this land out of the corporation and putting it in their names they can build by me and again we can take better care of each other. That's all we want to do. We are all a very close nit family and we have no problem with that.

With nothing further from the board... Mrs. Burrow opened the hearing to the public at 9:04 p.m. and with no one from the public stepping forward to address the board... Mrs. Burrow closed the public portion of the hearing at 9:04 p.m.

Mr. Galloway moved to approve **SBZA-RV-0005-06-2004** the road frontage requirement.

Mr. Musselman seconded.

After minimal comments... Mrs. Burrow called for the vote for Lots A & B road frontage from 150 ft. down to 45 ft. with no new road cut. **4 yes votes... 0 no votes.**

Mr. Galloway **moved to approve** the road frontage requirement variance of 72.7 ft. for Lot C.

Mr. Cooper seconded.

With no further comments from the board... Mrs. Burrow called for the vote. **4 yes votes... 0 no votes.**

Mr. Galloway **moved to reduce** the lot size from the required 3 acres to 1 acre for lots A & B.

Mr. Musselman seconded.

With no further comments... Mrs. Burrow called for the vote. **4 yes votes... 0 no votes.**

Director's Report: Nothing to present.

Legal Counsel Report: Nothing to present.

The next BZA meeting will be Tuesday, July 20, 2004.

With all items on the agenda being complete... Mrs. Burrow adjourned the meeting at 9:12 p.m.

Lee Anne Burrow, Vice Chairman

Date

Linda Burdett, Secretary

Date